



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 7, 1998

Mr. Phil Garrett
County Attorney
P.O. Box 190
Palo Pinto, Texas 76484

OR98-2375

Dear Mr. Garrett:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117858.

Palo Pinto County (the "county") has received an open records request for microfilmed records that you contend are not subject to required public disclosure. You explain that a private contractor creates and "maintains microfilm copies of the Deed Records of [the county] at a location other than the County Courthouse in case of a fire or catastrophe destroys the Courthouse and the records stored therein." You contend that these microfilm records are not in the custody of the county and therefore are not subject to required public disclosure.

Section 552.002(a) of the Government Code defines the meaning of "public information" for purposes of the Open Records Act:

In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) *for a governmental body and the governmental body owns the information or has a right of access to it.* [Emphasis added.]

It is clear to this office from the facts you have presented that the microfilm records, although not in the physical custody of the county, are maintained by the private contractor on behalf of the county and therefore are in the county's constructive possession. Consequently, the microfilm records constitute "public information" that is subject to the provisions of the Open Records Act. *See also* Gov't Code § 552.002(b), (c) (including

microfilm records as being subject to Open Records Act). The county must release the requested microfilmed records.

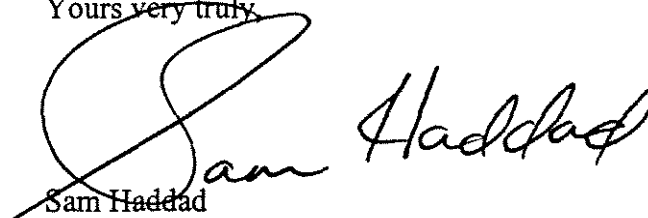
We additionally note that the General Services Commission has promulgated rules within the Texas Administrative Code regarding the cost of reproduction of microfilmed records.

If a governmental body already has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the governmental body should make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction. . . . *Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm may charge the actual costs of having the reproduction made commercially.*

1 T.A.C. § 111.63(f)(1) (emphasis added).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is stylized with a large, sweeping "S" and a cursive "Haddad".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/RWP1/mjc

Ref.: ID# 117858

cc: Mr. Roy Sparkman
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P.O. Drawer 99
Wichita Falls, Texas 76307-0099
(w/o enclosures)